IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

CRL.A.No. 795 of 1999()

CC.36/1992 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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APPELLANT:

N.K.RAJESH
MULLACKAL HOUSE
PAIPPAD VILLAGE
CHANGANACHERRY
KOTTAYAM

BY ADV. SRI.P.K.BALAKRISHNAN NAIR

RESPONDENTS:

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1. VARGHESE @ JOSE
PARIYARATHU VEEDU
NALUKODYBHAGOM
PAYIPPADKARA
CHANGANACHERRY

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM

BY ADV. SRI.SUNNY VARGHESE
SRI.P.A.AUGUSTIAN
PUBLIC PROSECUTOR SRI.CK.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.795 of 1999

Dated this the 2nd day of July, 2007

JUDGMENT

Appellant is the defacto complainant in C.C.No.36/92 in the file of the Judicial First Class Magistrate Court, Changanacherry.

2. The grievance of the defacto complainant is that the accused, who is involved in a number of criminal cases, has been released on probation on the basis of the false report submitted by the District Probation Officer. I find that the Sessions Judge remanded the matter confirming the conviction but directing to consider the question of the application of Probation of Offenders Act that Section 360 has not been considered by the court below. After remand, the court below called for the report from the District Probation Officer. The District Probation Officer reported that the accused is a person disciplined, humble and honest in nature and that the incident was the result of an instant reaction and that he has no bad habits or other any desirable contacts. The appellant has pointed out that the accused is the prime accused in

C.C.No.13/98 pending before the same court with respect to the offence under Section 307 IPC and is also the third accused in crime No.100/95 of the same court with respect to the offences under Sections 143, 147, 148, 341 and 324 IPC. Apart from that he is a party in Section 107 of Crl.P.C. proceedings vide crime No.8/95 before the Sub Divisional Magistrate, Kottayam. He was also an accused in C.C.No.890/93 before the JFCM, Changanassery. It appears that the court below was misled by the report of the probation officer which appears to be false to the core.

3. In the circumstances, the order of the court below, releasing the accused on probation, is set aside. The court below is directed to reconsider the matter and impose appropriate punishment. The court below is also directed to call for the explanation and if not satisfied initiate proceedings against the District Probation Officer after issuing notice to her. The matter is posted before the court below on 6.8.2007.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl